

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

Introduced

### House Bill 4019

FISCAL  
NOTE

BY DELEGATES J. KELLY, TONEY, WESTFALL, BARNHART,

MAYNARD, PORTERFIELD, MANDT, LITTLE, QUEEN,

HOUSEHOLDER AND BUTLER

[Introduced January 09, 2020; Referred to the

Committee on Finance]

1 A BILL to amend the Code of West Virginia by adding thereto a new article, designated §11-13FF-  
 2 1, §11-13FF-2, §11-13FF-3, §11-13FF-4, §11-13FF-5, §11-13FF-6, §11-13FF-7, §11-  
 3 13FF-8, §11-13FF-9, §11-13FF-10, §11-13FF-11, §11-13FF-12, §11-13FF-13, §11-13FF-  
 4 14, §11-13FF-15, §11-13FF-16, §11-13FF-17, §11-13FF-18, §11-13FF-19, and §11-  
 5 13FF-20, all relating generally to creating the Downstream Natural Gas Manufacturing  
 6 Investment Tax Credit Act of 2020; providing for administration and enforcement of act;  
 7 providing short title; making legislative findings; stating legislative purpose; defining certain  
 8 terms; specifying amount of credit allowable based on amount of qualified investment and  
 9 number of new jobs created; providing for application of credit; providing rules for  
 10 computing qualified investment and number of new jobs; providing rules for forfeiture of  
 11 unused tax credits and redetermination of tax credits under certain circumstances;  
 12 providing for recapture of credit under certain circumstances and imposing recapture tax;  
 13 allowing transfer of qualified investment property without forfeiture or recapture under  
 14 certain circumstances; requiring identification of qualified investment property and record  
 15 keeping; providing penalty for failure to keep required records; providing rules for  
 16 interpretation and construction of credit; requiring timely filing of application for credit;  
 17 specifying burden of proof; requiring periodic tax credit review and accountability reports;  
 18 authorizing rulemaking; making credit subject to West Virginia Tax Procedure and  
 19 Administration Act and West Virginia Tax Crimes and Penalties Act; providing for  
 20 severability; and specifying effective date.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 13FF. DOWNSTREAM NATURAL GAS MANUFACTURING INVESTMENT**

**TAX CREDIT OF 2020.**

**§11-13FF-1. Short title.**

1 This article may be cited as the Downstream Natural Gas Manufacturing Investment Tax

2 Credit Act of 2020.

**§11-13FF-2. Legislative finding and purpose.**

1 The Legislature finds that the encouragement of downstream manufacturing in this state  
2 is in the public interest and promotes the general welfare of the people of this state. In order to  
3 encourage greater capital investment in downstream natural gas manufacturing businesses in  
4 this state and thereby increase economic opportunity in this state, there is hereby enacted the  
5 downstream manufacturing tax credit.

**§11-13FF-3. Definitions.**

1 (a) General. -- When used in this article, or in the administration of §11-13FF-1 et seq. of  
2 this code, terms defined in subsection (b) have the meanings ascribed to them by this section,  
3 unless a different meaning is clearly required by either the context in which the term is used, or  
4 by specific definition, in §11-13FF-1 et seq. of this code.

5 (b) Terms defined.

6 (1) "Affiliated group" means any affiliated group within the meaning section 1504(a) of the  
7 Internal Revenue Code, or any similar group defined under a similar provision of state, local, or  
8 foreign law, except that section 1504 of Internal Revenue Code shall be applied by substituting  
9 "more than 50 percent" for "at least 80 percent" each place it appears in that section.

10 (2) "Business" means a downstream natural gas manufacturing business activity which is  
11 engaged in by any person in this state which is taxable under §11-21-1 et seq. or §11-24-1 et  
12 seq. of this code.

13 (3) "Business expansion" means capital investment in a new or expanded downstream  
14 natural gas manufacturing facility in this state.

15 (4) "Commissioner" or "Tax Commissioner" are used interchangeably in this article and  
16 mean the Tax Commissioner of the State of West Virginia, or his or her designee.

17 (5) "Compensation" means wages, salaries, commissions, and any other form of  
18 remuneration paid to employees for personal services.

19 (6) “Controlled group of corporations” means a controlled group of corporations as defined  
20 in section 1563(a) of the Internal Revenue Code.

21 (7) “Corporation” means any corporation, joint-stock company, association, or other entity  
22 treated as a corporation for federal income tax purposes, and any business conducted by a trustee  
23 or trustees wherein interest or ownership is evidenced by a certificate of interest or ownership or  
24 similar written instrument.

25 (8) “Designee” in the phrase “or his or her designee,” when used in reference to the Tax  
26 Commissioner, means any officer or employee of the State Tax Department duly authorized by  
27 the commissioner directly, or indirectly by one or more redelegations of authority, to perform the  
28 functions mentioned or described in this article.

29 (9) “Downstream natural gas manufacturing” refers to oil and gas manufacturing  
30 operations after the production and processing phases and includes, but is not limited to, facilities  
31 that use oil, natural gas, natural gas liquids, or the products produced by ethane crackers as raw  
32 materials to manufacture industrial and commercial products.

33 (10) “Downstream natural gas manufacturing business” means a business primarily  
34 engaged in this state in downstream natural gas manufacturing.

35 (11) “Downstream natural gas manufacturing facility” or “downstream manufacturing  
36 facility” means any factory, mill, plant, warehouse, building, or complex of buildings located within  
37 this state, including the land on which it is located, and all machinery, equipment, and other real  
38 and personal property located at or within the facility, used in connection with the operation of the  
39 facility, in a business that is taxable in this state, and all site preparation and start-up costs of the  
40 taxpayer for the downstream natural gas manufacturing facility which it capitalizes for federal  
41 income tax purposes.

42 (12) “Eligible taxpayer” means any person who makes qualified investment in a new or  
43 expanded downstream natural gas manufacturing facility located in this state and creates at least  
44 the required number of new jobs and who is subject to any of the taxes imposed by §11-21-1 et

45 seq. or §11-24-1 et seq. of this code.

46 (13) “Expanded facility” means any downstream natural gas manufacturing facility, other  
47 than a new or replacement business facility, resulting from the acquisition, construction,  
48 reconstruction, installation, or erection of improvements or additions to existing property if the  
49 improvements or additions are purchased on or after July 1, 2020, but only to the extent of the  
50 taxpayer’s qualified investment in the improvements or additions.

51 (14) “Includes” and “including” when used in a definition contained in this article, shall not  
52 be considered to exclude other things otherwise within the meaning of the term defined.

53 (15) “Leased property” does not include property which the taxpayer is required to show  
54 on its books and records as an asset under generally accepted principles of financial accounting.  
55 If the taxpayer is prohibited from expensing the lease payments for federal income tax purposes,  
56 the property shall be treated as purchased property under this section.

57 (16) “Natural gas” means a gaseous fossil energy source that formed deep beneath the  
58 earth’s surface that is a combustible mixture of methane and other hydrocarbons.

59 (17) “Natural gas liquids” includes the following separated from raw natural gas: butane,  
60 ethane, isobutane, pentane, propane, and similar liquid hydrocarbons and byproducts separated  
61 from natural gas.

62 (18) “Natural resources” means all forms of minerals, including, but not limited to, rock,  
63 stone limestone, coal shale, gravel, sand, clay, natural gas, oil, and natural gas liquids which are  
64 contained in or on the soils or waters of this state and includes standing timber.

65 (19) “New downstream natural gas manufacturing facility” means a business facility which  
66 satisfies all the requirements of paragraphs (A), (B), (C), and (D) of this subdivision.

67 (A) The facility is employed by the taxpayer in the conduct of a downstream natural gas  
68 manufacturing activity the net income of which is or would be taxable under §11-21-1 et seq. or  
69 §11-24-1 et seq. of this code. The facility is not considered a new downstream natural gas  
70 manufacturing facility in the hands of the taxpayer if the taxpayer’s only activity with respect to

71 the facility is to lease it to another person or persons.

72 (B) The facility is purchased by, or leased to, the taxpayer on or after July 1, 2020.

73 (C) The facility was not purchased or leased by the taxpayer from a related person. The  
74 commissioner may waive this requirement if the facility was acquired from a related party for its  
75 fair market value and the acquisition was not tax motivated.

76 (D) The facility was not in service or use during the 90 days immediately prior to transfer  
77 of the title to the facility, or prior to the commencement of the term of the lease of the facility:  
78 Provided, That this 90-day period may be waived by the commissioner if the commissioner  
79 determines that persons employed at the facility may be treated as “new employees” as that term  
80 is defined in this subsection.

81 (20) “New employee” –

82 (A) The term new employee means an individual hired by the taxpayer to fill a position or  
83 a job in this state which previously did not exist in the taxpayer’s downstream natural gas  
84 manufacturing activity in this state prior to the date on which the taxpayer’s qualified investment  
85 in a new or expanded downstream natural gas manufacturing facility is placed in service or use  
86 in this state. In no case may the number of new employees directly attributable to the investment  
87 for purposes of this credit exceed the total net increase in the taxpayer’s employment in this state:  
88 Provided, That the Tax Commissioner may require that the net increase in the taxpayer’s  
89 employment in this state be determined and certified for the taxpayer’s controlled group: Provided,  
90 however, That persons filling jobs saved as a direct result of taxpayer’s qualified investment in  
91 property purchased or leased for business expansion may be treated as new employees filling  
92 new jobs if the taxpayer certifies the material facts to the commissioner and the Tax Commissioner  
93 expressly finds that:

94 (i) But for the new employer purchasing the assets of a downstream natural gas  
95 manufacturing business in bankruptcy under chapter seven or 11 of the United States bankruptcy  
96 code and the new employer making qualified investment in property purchased or leased for

97 business expansion, the assets would have been sold by the United States bankruptcy court in a  
98 liquidation sale and the jobs saved would have been lost; or

99 (ii) But for the taxpayer's qualified investment in property purchased or leased for  
100 downstream manufacturing business expansion in this state, the taxpayer would have closed its  
101 downstream natural gas manufacturing facility in this state and the employees of the taxpayer  
102 located at the facility would have lost their jobs: *Provided*, That the Tax Commissioner may not  
103 make this certification unless the commissioner finds that the taxpayer is insolvent as defined in  
104 11 U.S.C. §101(32) or that the taxpayer's natural gas manufacturing facility was destroyed, in  
105 whole or in significant part, by fire, flood, or other act of God.

106 (B) A person is considered to be a new employee only if the person's duties in connection  
107 with the operation of the downstream natural gas manufacturing facility are on:

108 (i) A regular, full-time and permanent basis:

109 (I) Full-time employment means employment for at least 140 hours per month at a wage  
110 not less than the prevailing state or federal minimum wage, depending on which minimum wage  
111 provision is applicable to the business.

112 (II) Permanent employment does not include employment that is temporary or seasonal  
113 and therefore the wages, salaries, and other compensation paid to the temporary or seasonal  
114 employees will not be considered for purposes of §11-13FF-5 of this code.

115 (ii) A regular, part-time, and permanent basis: *Provided*, That the person is customarily  
116 performing the duties at least 20 hours per week for at least six months during the taxable year.

117 (21) "New job" means a job which did not exist in the downstream natural gas  
118 manufacturing business of the taxpayer in this state prior to the taxpayer's qualified investment  
119 being made, and which is filled by a new employee.

120 (22) "New property" means:

121 (A) Property, the construction, reconstruction, or erection of which is completed on or after  
122 July 1, 2020, and placed in service or use after that date; and

123 (B) Property leased or acquired by the taxpayer that is placed in service or use in this state  
124 on or after July 1, 2020, if the original use of the property commences with the taxpayer and  
125 commences after that date.

126 (23) "Original use" means the first use to which the property is put, whether or not the use  
127 corresponds to the use of the property by the taxpayer.

128 (24) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated  
129 organization through or by means of which any business, financial operation, or venture is carried  
130 on, which is treated as a partnership for federal income tax purposes, and which is not a trust or  
131 estate, a corporation, or a sole proprietorship.

132 (25) "Partner" includes a member in such a syndicate, group, pool, joint venture, or other  
133 organization.

134 (26) "Person" includes any natural person, corporation, or partnership.

135 (27) "Property purchased or leased for business expansion" --

136 (A) *Included property.* -- Except as provided in paragraph (B), the term "property  
137 purchased or leased for business expansion" means real property and improvements thereto, and  
138 tangible personal property, but only if the real or personal property was constructed, purchased,  
139 or leased and placed in service or use by the taxpayer, for use as a component part of a new or  
140 expanded downstream natural gas manufacturing facility as defined in this section, which is  
141 located within the State of West Virginia. This term includes only:

142 (i) Real property and improvements thereto having a useful life of four or more years,  
143 placed in service or use on or after July 1, 2020, by the taxpayer.

144 (ii) Real property and improvements thereto, acquired by written lease having a primary  
145 term of 10 or more years and placed in service or use by the taxpayer on or after July 1, 2020.

146 (iii) Tangible personal property placed in service or use by the taxpayer on or after July 1,  
147 2020, with respect to which depreciation, or amortization in lieu of depreciation, is allowable in  
148 determining the personal or corporation net income tax liability of the business taxpayer under

149 §11-21-1 et seq. or §11-24-1 et seq. of this code, and which has a useful life, at the time the  
150 property is placed in service or use in this state, of four or more years.

151 (iv) Tangible personal property acquired by written lease having a primary term of four  
152 years or longer, that commenced and was executed by the parties thereto on or after July 1, 2020,  
153 if used as a component part of a new or expanded downstream manufacturing business facility,  
154 shall be included within this definition.

155 (v) Tangible personal property owned or leased, and used by the taxpayer at a business  
156 location outside this state which is moved into the State of West Virginia on or after July 1, 2020,  
157 for use as a component part of a new or expanded downstream natural gas manufacturing facility  
158 located in this state: *Provided*, That if the property is owned, it must be depreciable or amortizable  
159 personal property for income tax purposes, and have a useful life of four or more years remaining  
160 at the time it is placed in service or use in this state, and if the property is leased, the primary term  
161 of the lease remaining at the time the leased property is placed in service or use in this state,  
162 must be four or more years.

163 (B) Excluded property. -- The term property purchased or leased for business expansion  
164 does not include:

165 (i) Property owned or leased by the taxpayer and for which the taxpayer was previously  
166 or is currently being allowed tax credit under §11-13D-1 et seq., §11-13Q-1 et seq., §11-13S-1 et  
167 seq., or §11-13U-1 et seq. of this code.

168 (ii) Property owned or leased by the taxpayer and for which the seller, lessor, or other  
169 transferor, was previously or is currently being allowed tax credit under §11-13D-1 et seq., §11-  
170 13Q-1 et seq., §11-13S-1 et seq., or §11-13U-1 et seq. of this code.

171 (iii) Repair costs, including materials used in the repair, unless for federal income tax  
172 purposes the cost of the repair must be capitalized and not expensed.

173 (iv) Airplanes and helicopters.

174 (v) Property which is primarily used outside this state, with use being determined based

175 upon the amount of time the property is actually used both within and outside this state.

176 (vi) Property which is acquired incident to the purchase of the stock or assets of the seller,  
177 unless for good cause shown, the Tax Commissioner consents to waiving this requirement.

178 (vii) Natural resources in place.

179 (viii) Purchased or leased property, the cost or consideration for which cannot be  
180 quantified with any reasonable degree of accuracy at the time the property is placed in service or  
181 use: *Provided*, That when the contract of purchase or lease specifies a minimum purchase price  
182 or minimum annual rent the amount thereof shall be used to determine the qualified investment  
183 in the property under §11-13FF-6 of this code if the property otherwise qualifies as property  
184 purchased or leased for expansion of a downstream natural gas manufacturing facility.

185 (28) "Purchase" means any acquisition of property, but only if:

186 (A) The property is not acquired from a person whose relationship to the person acquiring  
187 it would result in the disallowance of deductions under section 267 or 707 (b) of the United States  
188 Internal Revenue Code.

189 (B) The property is not acquired by one component member of an affiliated or controlled  
190 group from another component member of the same affiliated or controlled group, as applicable.  
191 The Tax Commissioner may waive this requirement if the property was acquired from a related  
192 party for its then fair market value; and

193 (C) The basis of the property for federal income tax purposes, in the hands of the person  
194 acquiring it, is not determined:

195 (i) In whole or in part, by reference to the federal adjusted basis of the property in the  
196 hands of the person from whom it was acquired; or

197 (ii) Under Section 1014(e) of the United States Internal Revenue Code.

198 (29) "Qualified activity" means any downstream natural gas manufacturing business  
199 activity subject to any of the taxes imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code  
200 but does not include the activity of severance or production of natural resources.

201 (30) “Related person” means:

202 (A) A corporation, partnership, association, or trust controlled by the taxpayer;

203 (B) An individual, corporation, partnership, association, or trust that is in control of the  
204 taxpayer;

205 (C) A corporation, partnership, association, or trust controlled by an individual, corporation,  
206 partnership, association, or trust that is in control of the taxpayer; or

207 (D) A member of the same affiliated or controlled group as the taxpayer.

208 For purposes of this subdivision, control, with respect to a corporation, means ownership,  
209 directly or indirectly, of stock possessing 50 percent or more of the total combined voting power  
210 of all classes of the stock of the corporation entitled to vote.

211 Control, with respect to a trust, means ownership, directly or indirectly, of 50 percent or  
212 more of the beneficial interest in the principal or income of the trust. The ownership of stock in a  
213 corporation, of a capital or profits interest in a partnership or association, or of a beneficial interest  
214 in a trust is determined in accordance with the rules for constructive ownership of stock provided  
215 in section 267(c) of the United States Internal Revenue Code, other than paragraph (3) of that  
216 section.

217 (31) “Replacement downstream natural gas manufacturing facility” means any property  
218 (other than an expanded downstream natural gas manufacturing facility) that replaces or  
219 supersedes any other property located within this state that:

220 (A) The taxpayer or a related person used in or in connection with any downstream natural  
221 gas manufacturing facility for more than two years during the period of five consecutive years  
222 ending on the date the replacement or superseding property is placed in service by the taxpayer;  
223 or

224 (B) Is not used by the taxpayer or a related person in or in connection with any downstream  
225 natural gas manufacturing facility for a continuous period of one year or more commencing with  
226 the date the replacement or superseding property is placed in service by the taxpayer.

227 (32) "Taxpayer" means any person subject to any of the taxes imposed by §11-21-1 et  
228 seq. or §11-24-1 et seq. of this code.

229 (33) "This code" means the Code of West Virginia, 1931, as amended.

230 (34) "This state" means the State of West Virginia.

231 (35) "United States Internal Revenue Code" or "I.R.C." means the Internal Revenue Code  
232 as defined in §11-21-1 et seq. or §11-24-1 et seq. of this code.

233 (36) "Used property" means property acquired after June 30, 2020, that is not "new  
234 property".

**§11-13FF-4. Amount of credit allowed.**

1 (a) Credit allowed. -- Eligible taxpayers are allowed a credit against the portion of taxes  
2 imposed by this state that are attributable to and the consequence of the taxpayer's qualified  
3 investment in a new or expanded downstream natural gas manufacturing facility in this state,  
4 which results in the creation of new jobs. The amount of this credit is determined and applied as  
5 provided in this article.

6 (b) Amount of credit. -- The amount of credit allowable is determined by multiplying the  
7 amount of the taxpayer's qualified investment, determined under §11-13FF-6 of this code, in  
8 property purchased or leased for a new, or expansion of an existing "downstream natural gas  
9 manufacturing facility", as defined in §11-13FF-3 of this code, by the taxpayer's new jobs  
10 percentage, determined under §11-13FF-7 of this code. The product of this calculation  
11 establishes the maximum amount of credit allowable under this article due to the qualified  
12 investment.

13 (c) Application of credit over 10 years. -- The amount of credit allowable must be taken  
14 over a 10-year period, at the rate of one tenth of the amount thereof per taxable year, beginning  
15 with the taxable year in which the taxpayer places the qualified investment in service or use in  
16 this state, unless the taxpayer elected to delay the beginning of the 10-year period until the next  
17 succeeding taxable year. This election shall be made in the annual income tax return filed under

18 this chapter for the taxable year in which qualified investment is first placed into service or use by  
19 the taxpayer. Once made, the election cannot be revoked. The annual credit allowance is taken  
20 in the manner prescribed in §11-13FF-5 of this code.

21 (d) *Placed in service or use.* -- For purposes of the credit allowed by this section, property  
22 is considered placed in service or use in the earlier of the following taxable years:

23 (1) The taxable year in which, under the taxpayer's depreciation practice, the period for  
24 depreciation with respect to the property begins; or

25 (2) The taxable year in which the property is placed in a condition or state of readiness  
26 and availability for a specifically assigned function.

**§11-13FF-5. Application of annual credit allowance.**

1 (a) *In general.* -- The aggregate annual credit allowance for the current taxable year is an  
2 amount equal to the sum of the following:

3 (1) The one-tenth part allowed under §11-13FF-4 of this code for qualified investment  
4 property placed into service or use during a prior taxable year; plus

5 (2) The one-tenth part allowed under §11-13FF-4 of this code for qualified investment  
6 property placed into service or use during the current taxable year.

7 (b) *Application of current year annual credit allowance.* -- The amount determined under  
8 subsection (a) of this section is allowed as a credit against 80 percent of that portion of the  
9 taxpayer's state tax liability which is attributable to and the direct result of the taxpayer's qualified  
10 investment, and applied as provided in subsections (c) and (d), both inclusive, of this section, and  
11 in that order: *Provided*, That if the median salary of the new jobs is higher than the statewide  
12 average nonfarm payroll wage, as determined annually by Workforce West Virginia, the amount  
13 determined under subsection (a) of this section is allowed as a credit against 100 percent of that  
14 portion of the taxpayer's state tax liability which is attributable to and the direct result of the  
15 taxpayer's qualified investment, and shall be applied, as provided in subsections (c) through (d),  
16 both inclusive, of this section, and in that order.

17 (c) Corporation net income taxes. –

18 (1) That portion of the allowable credit attributable to qualified investment in a downstream  
19 natural gas manufacturing facility may be applied to reduce the taxes imposed by §11-24-1 et  
20 seq. of this code for the taxable year as determined before application of allowable credits against  
21 tax.

22 (2) If the taxes due under §11-24-1 et seq. of this code, as determined before application  
23 of allowable credits against tax, are not solely attributable to and the direct result of the taxpayer's  
24 qualified investment in a downstream natural gas manufacturing business, the amount of the  
25 taxes that is attributable are determined by multiplying the amount of taxes due under §11-24-1  
26 et seq. of this code for the taxable year, as determined before application of allowable credits  
27 against tax, by a fraction, the numerator of which is all wages, salaries, and other compensation  
28 paid during the taxable year to all employees of the taxpayer employed in this state whose  
29 positions are directly attributable to the qualified investment. The denominator of the fraction is  
30 the wages, salaries, and other compensation paid during the taxable year to all employees of the  
31 taxpayer employed in this state.

32 (d) Personal income taxes. --

33 (1) If the person making the qualified investment in a downstream natural gas  
34 manufacturing facility is an electing small business corporation, as defined in section 1361 of the  
35 United States Internal Revenue Code, a partnership, a limited liability company that is treated as  
36 a partnership for federal income tax purposes, or a sole proprietorship, then any unused credit is  
37 allowed as a credit against the taxes imposed by §11-21-1 et seq. of this code on the income from  
38 downstream natural gas manufacturing facility, or on income of a sole proprietor attributable to  
39 the downstream natural gas manufacturing facility.

40 (2) Electing small business corporations, limited liability companies treated as  
41 partnerships for federal income tax purposes, partnerships, and other unincorporated  
42 organizations shall allocate the credit allowed by this article among its members in the same

43 manner as profits and losses are allocated for the taxable year.

44 (3) If the amount of taxes due under §11-21-1 et seq. of this code, as determined before  
45 application of allowable credits against tax, that is attributable to business, is not solely attributable  
46 to and the direct result of the qualified investment of the electing small business corporation,  
47 limited liability company treated as a partnership for federal income tax purposes, other  
48 unincorporated organization, or sole proprietorship, the amount of the taxes that are so  
49 attributable are determined by multiplying the amount of taxes due under §11-21-1 et seq. of this  
50 code, as determined before application of allowable credits against tax, that is attributable to  
51 business by a fraction, the numerator of which is all wages, salaries, and other compensation paid  
52 during the taxable year to all employees of the electing small business corporation, limited liability  
53 company, partnership, other unincorporated organization, or sole proprietorship employed in this  
54 state, whose positions are directly attributable to the qualified investment. The denominator of the  
55 fraction is the wages, salaries, and other compensation paid during the taxable year to all  
56 employees of the taxpayer.

57 (4) No credit is allowed under this section against any employer withholding taxes imposed  
58 by §11-21-1 et seq. of this code.

59 (e) If the wages, salaries, and other compensation fraction formula provisions of  
60 subsections (c) and (d) of this section, inclusive, do not fairly represent the taxes solely attributable  
61 to and the direct result of qualified investment of the taxpayer the Tax Commissioner may require,  
62 in respect to all or any part of the taxpayer's businesses or activities, if reasonable:

63 (1) Separate accounting or identification;

64 (2) Adjustment to the wages, salaries, and other compensation fraction formula to reflect  
65 all components of the tax liability;

66 (3) The inclusion of one or more additional factors that will fairly represent the taxes solely  
67 attributable to and the direct result of the qualified investment of the taxpayer and all other project  
68 participants in the businesses or other activities subject to tax; or

69 (4) The employment of any other method to effectuate an equitable attribution of the taxes.  
 70 In order to effectuate the purposes of this subsection, the Tax Commissioner may propose  
 71 for promulgation rules, including emergency rules, in accordance with §29A-3-1 et seq. of this  
 72 code.

73 (f) Unused credit. -- If any credit remains after application of subsection (b) of this section,  
 74 the amount thereof is carried forward to each ensuing tax year until used or until the expiration of  
 75 the tenth taxable year subsequent to the end of the initial 10-year credit application period. If any  
 76 unused credit remains after the 20th year, the amount thereof is forfeited. No carryback to a prior  
 77 taxable year is allowed for the amount of any unused portion of any annual credit allowance.

**§11-13FF-6. Qualified investment.**

1 (a) General. -- The qualified investment in property purchased or leased for a new, or  
 2 expansion of an existing, downstream natural gas manufacturing facility is the applicable  
 3 percentage of the cost of each property purchased or leased for the purpose of the new, or  
 4 expansion of an existing, downstream natural gas manufacturing facility which is placed in service  
 5 or use in this state by the taxpayer during the taxable year.

6 (b) Applicable percentage. -- For the purpose of subsection (a), the applicable percentage  
 7 of any property is determined under the following table:

If useful life is:	The applicable percentage is:
Less than four years	0%
Four years or more but less than six years	33 1/3%
Six years or more but less than eight years	66 2/3%
Eight years or more	100%

13 The useful life of any property, for purposes of this section, is determined as of the date  
 14 the property is first placed in service or use in this state by the taxpayer, determined in accordance  
 15 with such rules and requirements the Tax Commissioner may prescribe.

16 (c) Cost. -- For purposes of subsection (a) of this section, the cost of each property

17 purchased for a new, or expansion of an existing, downstream natural gas manufacturing facility  
18 is determined under the following rules:

19 (1) Trade-ins. -- Cost does not include the value of property given in trade or exchange for  
20 the property purchased for a new, or for expansion of an existing, downstream natural gas  
21 manufacturing facility.

22 (2) Damaged, destroyed, or stolen property. -- If property is damaged or destroyed by fire,  
23 flood, storm, or other casualty, or is stolen, then the cost of replacement property does not include  
24 any insurance proceeds received in compensation for the loss.

25 (3) Rental property. --

26 (A) The cost of real property acquired by written lease for a primary term of 10 years or  
27 longer is 100 percent of the rent reserved for the primary term of the lease, not to exceed 20  
28 years.

29 (B) The cost of tangible personal property acquired by written lease for a primary term of:

30 (i) Four years, or longer, is one third of the rent reserved for the primary term of the lease;

31 (ii) Six years, or longer, is two thirds of the rent reserved for the primary term of the lease;

32 or

33 (iii) Eight years, or longer, is 100 percent of the rent reserved for the primary term of the  
34 lease, not to exceed 20 years: *Provided*, That in no event may rent reserved include rent for any  
35 year subsequent to expiration of the book life of the equipment, determined using the straight-line  
36 method of depreciation.

37 (4) Self-constructed property. -- In the case of self-constructed property, the cost thereof  
38 is the amount properly charged to the capital account for depreciation in accordance with federal  
39 income tax law.

40 (5) Transferred property. -- The cost of property used by the taxpayer out-of-state and  
41 then brought into this state, is determined based on the remaining useful life of the property at the  
42 time it is placed in service or use in this state, and the cost is the original cost of the property to

43 the taxpayer less straight line depreciation allowable for the tax years or portions thereof the  
 44 taxpayer used the property outside this state. In the case of leased tangible personal property,  
 45 cost is based on the period remaining in the primary term of the lease after the property is brought  
 46 into this state for use in a new or expanded business facility of the taxpayer, and is the rent  
 47 reserved for the remaining period of the primary term of the lease, not to exceed 20 years, or the  
 48 remaining useful life of the property, as determined as aforesaid, whichever is less.

**§11-13FF-7. New jobs percentage.**

1 (a) In general. -- The new jobs percentage is based on the number of new jobs created in  
 2 this state directly attributable to the qualified investment of the taxpayer.

3 (b) When a job is attributable. -- An employee's position is directly attributable to the  
 4 qualified investment if:

5 (1) The employee's service is performed or his or her base of operations is at the new or  
 6 expanded downstream natural gas manufacturing facility;

7 (2) The position did not exist prior to the construction, renovation, expansion, or acquisition  
 8 of the downstream natural gas manufacturing facility and the making of the qualified investment;  
 9 and

10 (3) But for the qualified investment, the position would not have existed.

11 (c) Applicable percentage. -- For the purpose of subsection (a) of this section, the  
 12 applicable new jobs percentage is determined under the following table:

<u>If number of new jobs is at least:</u>	<u>The applicable percentage is:</u>
5	10%
50	15%
150	20%

17 (d) Certification of new jobs. -- With the annual return for the applicable taxes filed for the  
 18 taxable year in which the qualified investment is first placed in service or use in this state, the  
 19 taxpayer shall estimate and certify the number of new jobs reasonably projected to be created by

20 it in this state within the period prescribed in subsection (f) of this section that are, or will be,  
21 directly attributable to the qualified investment of the taxpayer. For purposes of this section,  
22 applicable taxes means the taxes imposed by §11-21-1 et seq. or §11-24-1 et seq. of this code  
23 against which this credit is applied.

24 (e) *Equivalency of permanent employees.* -- The hours of part-time employees shall be  
25 aggregated to determine the number of equivalent full-time employees for the purpose of this  
26 section.

27 (f) *Redetermination of new jobs percentage.* -- With the annual return for the applicable  
28 taxes imposed, filed for the third taxable year in which the qualified investment is in service or  
29 use, the taxpayer shall certify the actual number of new jobs created by it in this state that are  
30 directly attributable to the qualified investment of the taxpayer.

31 (1) If the actual number of jobs created would result in a higher new jobs percentage, the  
32 credit allowed under this article shall be redetermined and amended returns shall be filed for the  
33 first and second taxable years that the qualified investment was in service or use in this state.

34 (2) If the actual number of jobs created would result in a lower new jobs percentage, the  
35 credit previously allowed under this article shall be redetermined and amended returns shall be  
36 filed for the first and second taxable years. In applying the amount of redetermined credit  
37 allowable for the two preceding taxable years, the redetermined credit shall first be applied to the  
38 extent it was originally applied in the prior two years to personal income taxes, and then to  
39 corporation net income taxes. Any additional taxes due under this chapter shall be remitted with  
40 the amended returns filed with the Tax Commissioner, along with interest, as provided in §11-10-  
41 17 of this code, and a 10-percent penalty determined on the amount of taxes due with the  
42 amended return, which may be waived by the commissioner if the taxpayer shows that the  
43 overclaimed amount of the new jobs percentage was due to reasonable cause and not due to  
44 willful neglect.

45 (g) *Additional new jobs percentage.* -- When the qualified investment is \$20 million or

46 more and the new or expanded downstream natural gas manufacturing facility is constructed  
47 using construction laborers and mechanics who are paid an average wage equal to or greater  
48 than the prevailing wage for their respective classes of work determined under §21-1-1 et seq. of  
49 this code, then, if the number of full-time construction laborers and mechanics working at the job  
50 site of the new or expanded business facility is 50 or more, or if the number of hours of all  
51 construction laborers and mechanics working at the job site is equal to or greater than the number  
52 of hours 50 full-time construction laborers and mechanics would have worked at the job site during  
53 a 12 consecutive month period, a taxpayer that is allowed a new jobs percentage determined  
54 under subsection (a) of this section shall be allowed a new jobs percentage that is five percentage  
55 points higher than the new jobs percentage allowed under subsection (a) of this section. In no  
56 event may construction laborers and mechanics be used to attain or retain a subsection (a) new  
57 jobs percentage. The number of full-time construction laborers and mechanics working at the job  
58 site shall be determined by dividing the total number of hours worked by all construction laborers  
59 and mechanics on a new or expanded business facility during a 12 consecutive month period by  
60 2,080 hours per year. A taxpayer may not claim the additional new jobs percentage allowed by  
61 this section unless the taxpayer includes with the certification filed under subsection (d) of this  
62 section a certification signed by the general contractor or the construction manager certifying that  
63 construction laborers employed at the job site during a consecutive 12 month period aggregated  
64 the equivalent of at least 50 full-time employees and the taxpayer has received from the general  
65 contractor or construction manager records substantiating the certification, which records shall be  
66 retained by the taxpayer for 13 years after the day the expansion to an existing business facility,  
67 or the new business facility, is first placed in service or use by the taxpayer. For purposes of  
68 subsection (g) of this section:

69 (1) The term construction laborers and mechanics means those workers, utilized by a  
70 contractor or subcontractor at any tier, whose duties are manual or physical in nature, including  
71 those workers who use tools or are performing the work of a trade, as distinguished from mental

72 or managerial and working foremen who devote more than 20 percent of their time during a  
73 workweek performing the duties of a laborer or mechanic; and

74 (2) The term job site is limited to the physical place or places where the construction called  
75 for in the contract will remain when the work on it is completed and nearby property, as described  
76 in subdivision (3) of this subsection, used by the contractor or subcontractor during construction  
77 that, because of proximity, can reasonably be included in the site.

78 (3) Except as provided in subdivision (4) of this subsection, fabrication plants, mobile  
79 factories, batch plants, borrow pits, job headquarters, and tool yards are part of the job site  
80 provided they are dedicated exclusively, or nearly so, to performance of the contract or project  
81 and are located in proximity to the actual construction location so that it would be reasonable to  
82 include them.

83 (4) The term "job site does not include permanent home offices, branch offices, branch  
84 plant establishments, fabrication yards, or tool yards of a contractor or subcontractor whose  
85 locations and continuance in operation are determined without regard to the contract or  
86 subcontract for construction of a new or expanded business facility.

**§11-13FF-8. Forfeiture of unused tax credits; redetermination of credit allowed.**

1 (a) *Disposition of property or cessation of use.* -- If during any taxable year, property with  
2 respect to which a tax credit has been allowed under §11-13FF-1 *et seq.* of this code:

3 (1) Is disposed of prior to the end of its useful life, as determined under §11-13FF-6 of this  
4 code; or

5 (2) Ceases to be used in a downstream natural gas manufacturing facility of the taxpayer  
6 in this state prior to the end of its useful life, as determined under §11-13FF-6 of this code, then  
7 the unused portion of the credit allowed for the property is forfeited for the taxable year and all  
8 ensuing years. Additionally, except when the property is damaged or destroyed by fire, flood,  
9 storm, or other casualty, or is stolen, the taxpayer shall redetermine the amount of credit allowed  
10 in all earlier years by reducing the applicable percentage of cost of the property allowed under

11 §11-13FF-5 of this code, to correspond with the percentage of cost allowable for the period of  
12 time that the property was actually used in this state in the new or expanded business of the  
13 taxpayer. The taxpayer shall then file a reconciliation statement for the year in which the forfeiture  
14 occurs and pay any additional taxes owed due to reduction of the amount of credit allowable for  
15 the earlier years, plus interest and any applicable penalties. The reconciliation statement shall be  
16 filed with the annual income return for the primary tax for which the taxpayer is liable under §11-  
17 21-1 et seq. or §11-24-1 et seq. of this code, whichever is applicable.

18 (b) Cessation of operation of downstream manufacturing facility. -- If during any taxable  
19 year the taxpayer ceases operation of a downstream natural gas manufacturing facility in this  
20 state for which credit was allowed under this article, before expiration of the useful life of property  
21 with respect to which tax credit has been allowed under this article, then the unused portion of  
22 the allowed credit is forfeited for the taxable year and for all ensuing years. Additionally, except  
23 when the cessation is due to fire, flood, storm, or other casualty, the taxpayer shall redetermine  
24 the amount of credit allowed in earlier years by reducing the applicable percentage of cost of the  
25 property allowed under §11-13FF-6 of this code, to correspond with the percentage of cost  
26 allowable for the period of time that the property was actually used in this state in a downstream  
27 manufacturing business of the taxpayer that is taxable under §11-24-1 et seq. of this code, or in  
28 the case of a partnership, limited liability company treated as a partnership for federal income tax  
29 purposes, electing small business corporation, other unincorporated entity, or sole proprietorship,  
30 taxable under §11-21-1 et seq. of this code. The taxpayer shall then file a reconciliation statement  
31 with the annual return for the primary tax for which the taxpayer is liable under §11-21-1 et seq.  
32 or §11-24-1 et seq. of this code, whichever is applicable, for the year in which the forfeiture occurs,  
33 and pay any additional taxes owed due to the reduction of the amount of credit allowable for the  
34 earlier years, plus interest and any applicable penalties.

35 (c) Reduction in number of employees. -- If during any taxable year subsequent to the  
36 taxable year in which the new jobs percentage is redetermined as provided in §11-13FF-7 of this

37 code, the average number of employees of the taxpayer, for the then current taxable year,  
38 employed in positions created because of and directly attributable to the qualified investment falls  
39 below the minimum number of new jobs created upon which the taxpayer's annual credit  
40 allowance is based, the taxpayer shall calculate what his or her annual credit allowance would  
41 have been had his or her new jobs percentage been determined based upon the average number  
42 of employees, for the then current taxable year, employed in positions created because of and  
43 directly attributable to the qualified investment. The difference between the result of this  
44 calculation and the taxpayer's annual credit allowance for the qualified investment as determined  
45 under §11-13FF-4 of this code, is forfeited for the then current taxable year, and for each  
46 succeeding taxable year unless for a succeeding taxable year the taxpayer's average  
47 employment in positions directly attributable to the qualified investment once again meets the  
48 level required to enable the taxpayer to utilize its full annual credit allowance for that taxable year.

**§11-13FF-9. Recapture of credit; recapture tax imposed.**

1 (a) *When recapture tax applies.* --

2 (1) Any person who places qualified investment property in service or use at a downstream  
3 natural gas manufacturing facility and who fails to use the qualified investment property for at  
4 least the period of its useful life, as determined as of the time the property was placed in service  
5 or use, or the period of time over which tax credits allowed under this article with respect to the  
6 property are applied under this article, whichever period is less, and who reduces the number of  
7 its employees filling new jobs at its downstream natural gas manufacturing facility in this state,  
8 which were created and are directly attributable to the qualified investment property, after the third  
9 taxable year in which the qualified investment property was placed in service or use, or fails to  
10 continue to employ individuals in all the new jobs created as a direct result of the qualified  
11 investment property and used to qualify for the credit allowed by this article, prior to the end of  
12 the tenth taxable year after the qualified investment property was placed in service or use, the  
13 person shall pay the recapture tax imposed by subsection (b) of this section.

14 (2) This section does not apply when §11-13FF-11 of this code applies. However, the  
15 successor, or the successors, and the person, or persons, who previously claimed credit under  
16 this article with respect to the qualified investment property and the new jobs attributable thereto,  
17 are jointly and severally liable for payment of any recapture tax subsequently imposed under this  
18 section with respect to the qualified investment property and new jobs.

19 (b) Recapture tax imposed. -- The recapture tax imposed by this subsection is the amount  
20 determined as follows:

21 (1) Full recapture. -- If the taxpayer prematurely removes qualified investment property  
22 placed in service (when considered as a class) from economic service in the taxpayer's  
23 downstream natural gas manufacturing facility in this state, and the number of employees filling  
24 the new jobs created by the person falls below the number of new jobs required to be created in  
25 order to qualify for the amount of credit being claimed, the taxpayer shall recapture the amount of  
26 credit claimed under §11-13FF-5 of this code for the taxable year, and all preceding taxable years,  
27 on qualified investment property which has been prematurely removed from service. The amount  
28 of tax due under this subdivision is an amount equal to the amount of credit that is recaptured  
29 under this subdivision.

30 (2) Partial recapture. -- If the taxpayer prematurely removes qualified investment property  
31 from economic service in the taxpayer's downstream natural gas manufacturing facility in this  
32 state, and the number of employees filling the new jobs created by the person remains 20 or  
33 more, but falls below the number necessary to sustain continued application of credit determined  
34 by use of the new job percentage upon which the taxpayer's one-tenth annual credit allowance  
35 was determined under §11-13FF-4 of this code, taxpayer shall recapture an amount of credit  
36 equal to the difference between:

37 (A) The amount of credit claimed under §11-13FF-5 of this code for the taxable year, and  
38 all preceding taxable years; and

39 (B) The amount of credit that would have been claimed in those years if the amount of

40 credit allowable under §11-13FF-4 of this code had been determined based on the qualified  
41 investment property which remains in service using the average number of new jobs filled by  
42 employees in the taxable year for which recapture occurs. The amount of tax due under this  
43 subdivision is an amount equal to the amount of credit that is recaptured under this subdivision.

44 (3) *Additional recapture.* -- If after a partial recapture under subdivision (2) of this  
45 subsection, the taxpayer further reduces the number of employees filling new jobs, the taxpayer  
46 shall recapture an additional amount determined as provided under subdivision (1) of this  
47 subsection. The amount of tax due under this subdivision is an amount equal to the amount of  
48 credit that is recaptured under this subdivision.

49 (c) *Payment of recapture tax.* -- The amount of tax recaptured under this section is due  
50 and payable on the day the person's annual return is due for the taxable year in which this section  
51 applies, under §11-21-1 *et seq.* or 11-24-1 *et seq.* of this code. When the employer is a  
52 partnership, limited liability company, or S corporation for federal income tax purposes, the  
53 recapture tax shall be paid by those persons who are partners in the partnership, members in the  
54 company, or shareholders in the S corporation, in the taxable year in which recapture occurs  
55 under this section.

56 (d) *Rules.* -- The Tax Commissioner may promulgate such rules as may be useful or  
57 necessary to carry out the purpose of this section and to implement the intent of the Legislature.  
58 Rules shall be promulgated in accordance with the provisions §29A-3-1 *et seq.* of this code.

**§11-13FF-10. Transfer of qualified investment to successors.**

1 (a) *Mere change in form of business.* -- Property may not be treated as disposed of under  
2 §11-13FF-8 of this code, by reason of a mere change in the form of conducting the business as  
3 long as the property is retained in the successor's downstream natural gas manufacturing facility  
4 in this state, and the transferor business retains a controlling interest in the successor business.  
5 In this event, the successor business is allowed to claim the amount of credit still available with  
6 respect to the business facility or facilities transferred, and the transferor business may not be

7 required to redetermine the amount of credit allowed in earlier years.

8 (b) Transfer or sale to successor. -- Property is not treated as disposed of under §11-  
9 13FF-10 of this code by reason of any transfer or sale to a successor business which continues  
10 to operate the downstream natural gas manufacturing facility in this state. Upon transfer or sale,  
11 the successor shall acquire the amount of credit that remains available under this article for each  
12 subsequent taxable year and the transferor business is not required to redetermine the amount  
13 of credit allowed in earlier years.

**§11-13FF-11. Identification of investment credit property.**

1 Every taxpayer who claims credit under §11-13FF-1 et seq. of this code shall maintain  
2 sufficient records to establish the following facts for each item of qualified property:

3 (1) Its identity;

4 (2) Its actual or reasonably determined cost;

5 (3) Its straight-line depreciation life;

6 (4) The month and taxable year in which it was placed in service;

7 (5) The amount of credit taken; and

8 (6) The date it was disposed of or otherwise ceased to be use as qualified property in the  
9 downstream natural gas manufacturing facility of the taxpayer.

**§11-13FF-12. Failure to keep records of investment credit property.**

1 A taxpayer who does not keep the records required for identification of investment credit  
2 property is subject to the following rules:

3 (1) A taxpayer is treated as having disposed of, during the taxable year, any investment  
4 credit property which the taxpayer cannot establish was still on hand, in this state, at the end of  
5 that year.

6 (2) If a taxpayer cannot establish when investment credit property reported for purposes  
7 of claiming this credit returned during the taxable year was placed in service, the taxpayer is  
8 treated as having placed it in service in the most recent prior year in which similar property was

9 placed in service, unless the taxpayer can establish that the property placed in service in the most  
10 recent year is still on hand. In that event, the taxpayer will be treated as having placed the returned  
11 property in service in the next most recent year.

**§11-13FF-13. Interpretation and construction.**

1 (a) No inference, implication, or presumption of legislative construction or intent may be  
2 drawn or made by reason of the location or grouping of any particular section, provision, or portion  
3 of §11-13FF-1 et seq. of this code; and no legal effect may be given to any descriptive matter or  
4 heading relating to any section, subsection, or paragraph of this article.

5 (b) The provisions of §11-13FF-1 et seq. of this code shall be reasonably construed in  
6 order to effectuate the legislative intent recited in §11-13FF-2 of this code.

**§11-13FF-14. Burden of proof; application required; failure to make timely application.**

1 (a) Burden of proof. -- The burden of proof is on the taxpayer to establish by clear and  
2 convincing evidence that the taxpayer is entitled to the benefits allowed by §11-13FF-1 et seq. of  
3 this code.

4 (b) Application for credit required. --

5 (1) Application required. -- Notwithstanding any provision of this article to the contrary, no  
6 credit is allowed or may be applied under §11-13FF-1 et seq. of this code for any qualified  
7 investment property placed in service or use until the person asserting a claim for the allowance  
8 of credit under this article makes written application to the commissioner for allowance of credit  
9 as provided in this subsection. An application for credit shall be filed, in the form prescribed by  
10 the Tax Commissioner, no later than the last day for filing the tax returns, determined by including  
11 any authorized extension of time for filing the return, required under §11-21-1 et seq. or §11-24-  
12 1 et seq. of this code for the taxable year in which the property to which the credit relates is placed  
13 in service or use and all information required by the form shall be provided.

14 (2) Failure to make timely application. -- The failure to timely apply for the credit results in  
15 the forfeiture of 50 percent of the annual credit allowance otherwise allowable under §11-13FF-1

16 et seq. of this code. This penalty applies annually until the application is filed.

**§11-13FF-15. Tax credit review and accountability.**

1 (a) Beginning on February 1, 2025, and every third year thereafter, the Tax Commissioner  
2 shall submit to the Governor, the President of the Senate, and the Speaker of the House of  
3 Delegates a tax credit review and accountability report evaluating the cost effectiveness of this  
4 credit during the most recent three-year period for which information is available. The criteria to  
5 be evaluated shall include, but not be limited to, for each year of the three-year period:

6 (1) The numbers of taxpayers claiming the credit;

7 (2) The net number of new jobs created by all taxpayers claiming the credit;

8 (3) The cost of the credit;

9 (4) The cost of the credit per new job created; and

10 (5) Comparison of employment trends for an industry and for taxpayers within the industry  
11 that claim the credit.

12 (b) Taxpayers claiming the credit shall provide any information the Tax Commissioner may  
13 require to prepare the report required by this section: *Provided*, That the information provided is  
14 subject to the confidentiality and disclosure provisions of §11-10-5d of this code.

15 (c) On or before February 1, 2025, the Department of Commerce, in consultation with the  
16 Tax Commissioner, the Department of Transportation, and the Department of Environmental  
17 Protection shall submit to the Governor, the President of the Senate, and the Speaker of the  
18 House of Delegates a report of the impact of all the tax credits and other economic incentives  
19 provided in §11-13FF-1 et seq. of this code upon; (1) Economic development in this state,  
20 including, but not limited to, the creation of jobs in this state; (2) the state's infrastructure,  
21 including, but not limited to, the need for construction or maintenance of the roads and highways  
22 of the state; (3) the natural resources of the state; and (4) upon public and private property  
23 interests in the state.

**§11-13FF-16. Rules.**

1       The Tax Commissioner may promulgate such interpretive, legislative, and procedural  
2 rules as the commissioner deems to be useful or necessary to carry out the purpose of §11-13FF-  
3 1 et seq. of this code and to implement the intent of the Legislature. The Tax Commissioner may  
4 promulgate emergency rules if they are filed in the West Virginia Register before January 1, 2021.  
5 All rules shall be promulgated in accordance with the provisions of §29A-3-1 et seq. of this code.

**§11-13FF-17. General procedure and administration.**

1       Each and every provision of the “West Virginia Tax Procedure and Administration Act” set  
2 forth in §11-10-1 et seq. of this code applies to the tax credit allowed under §11-13FF-1 et seq.  
3 of this code, except as otherwise expressly provided in this article, with like effect as if that act  
4 were applicable only to the tax credit allowed by §11-13FF-1 et seq. of this code and were set  
5 forth in extenso in this article.

**§11-13FF-18. Crimes and penalties.**

1       Each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in  
2 §11-9-1 et seq. of this code applies to the tax credit allowed by §11-13FF-1 et seq. of this code  
3 with like effect as if that act were applicable only to the tax credit §11-13FF-1 et seq. of this code  
4 and were set forth *in extenso* in this article.

**§11-13FF-19. Severability.**

1       (a) If any provision of §11-13-FF-1 et seq. of this code, or the application thereof, is for  
2 any reason adjudged by any court of competent jurisdiction to be invalid, the judgment may not  
3 affect, impair, or invalidate the remainder of §11-13FF-1 et seq. of this code, but shall be confined  
4 in its operation to the provision thereof directly involved in the controversy in which the judgment  
5 shall have been rendered, and the applicability of the provision to other persons or circumstances  
6 may not be affected thereby.

7       (b) If any provision of §11-13FF-1 et seq. of this code, or the application thereof, is made  
8 invalid or inapplicable by reason of the repeal or any other invalidation of any statute therein  
9 addressed or referred to, such invalidation or inapplicability may not affect, impair, or invalidate

10 the remainder of §11-13FF-1 et seq. of this code, but shall be confined in its operation to the  
11 provision thereof directly involved with, pertaining to, addressing, or referring to the statute, and  
12 the application of the provision with regard to other statutes or in other instances not affected by  
13 any such repealed or invalid statute may not be abrogated or diminished in any way.

**§11-13FF-20. Effective date.**

1 The credit allowed by this article is allowable for qualified investment property placed in  
2 service or use on or after July 1, 2020, subject to the rules contained in §11-13FF-1 et seq. of this  
3 code and rules promulgated by the Tax Commissioner pursuant to §29A-3-1 et seq. of this code.

NOTE: The purpose of this bill is to create the Downstream Natural Gas Manufacturing Investment Tax Credit Act of 2020. The amount of credit allowable depends upon the cost of the qualified investment property and the number of new jobs created. The allowable credit is taken over a 10-year period at the rate of one-tenth per year. Unused credit may be carried forward for another 10 years. Property that qualifies for another tax credit in chapter 11 of the West Virginia Code is not eligible for credit under this bill. Similarly, qualified investment property under this bill is not eligible for another credit under chapter 11 of the Code. The bill includes rules for administration and enforcement of the credit. If enacted, the credit would apply to qualified investment property placed in service or use at a downstream natural gas manufacturing facility in this state.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.